

WATER AND LAND USE DEVELOPMENT

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Darin G. Peterson

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to water and land use development.

Highlighted Provisions:

This bill:

- ▶ prohibits a municipality from conditioning the granting of an annexation petition on a water right transfer unless certain requirements are met;

- ▶ prohibits a municipality or a county from requiring a land use applicant to transfer a water right in order to receive approval for a development if there is sufficient water to serve the development;

- ▶ requires a municipality or a county to conduct a water supply study before requiring a land use applicant to transfer a water right;

- ▶ limits the quantity of water right required to be transferred to the duty values established by the Division of Water Rights;

- ▶ prohibits the state engineer from denying change application because of nonuse of the water right; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



Utah Code Sections Affected:

AMENDS:

10-2-408, as last amended by Laws of Utah 2001, Chapter 206

10-9a-508, as last amended by Laws of Utah 2007, Chapter 291

17-27a-507, as last amended by Laws of Utah 2007, Chapter 291

73-2-27, as enacted by Laws of Utah 2005, Chapter 215

73-3-3, as last amended by Laws of Utah 2005, Chapter 215

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **10-2-408** is amended to read:

10-2-408. Denial of or granting the annexation petition.

(1) After receipt of the commission's decision on a protest under Subsection 10-2-416(2), a municipal legislative body may:

(a) except as provided in Subsection (2) for a proposed annexation of an area located in a county of the first class, deny the annexation petition; or

(b) if the commission approves the annexation, grant the annexation petition and, by ordinance and consistent with the commission's decision, annex the area that is the subject of the annexation petition.

(2) A municipal legislative body may not deny an annexation petition proposing to annex an area located in a county of the first class if:

(a) the petition contains the signatures of the owners of private real property that:

(i) is located within the area proposed for annexation;

(ii) covers a majority of the private land area within the area proposed for annexation;

and

(iii) is equal in value to at least 1/2 of the value of all private real property within the area proposed for annexation;

(b) the population in the area proposed for annexation does not exceed 10% of the population of the proposed annexing municipality;

(c) the property tax rate for municipal services in the area proposed to be annexed is higher than the property tax rate of the proposed annexing municipality; and

(d) all annexations by the proposed annexing municipality during the year that the

petition was filed have not increased the municipality's population by more than 20%.

(3) A municipal legislative body may not condition the granting of an annexation petition on the transfer of a water right unless:

(a) the municipality conducts a water supply study, as described in Section 10-9a-508, that demonstrates the public water system, as defined in Section 19-4-102, in whose service area the area proposed for annexation will be located upon annexation, does not have sufficient water rights to deliver water to the area proposed for annexation; and

(b) the water right quantity that the legislative body requires the person who filed the petition to transfer does not exceed the duty value, as established by the Division of Water Rights, for the area proposed for annexation.

Section 2. Section **10-9a-508** is amended to read:

10-9a-508. Exactions.

(1) A municipality may impose an exaction or exactions on development proposed in a land use application if:

(a) an essential link exists between a legitimate governmental interest and each exaction; and

(b) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.

(2) (a) If a municipality plans to dispose of surplus real property that was acquired under this section and has been owned by the municipality for less than five years, the municipality shall first offer to reconvey the property, without receiving additional consideration, to the person who granted the property to the municipality.

(b) A person to whom a municipality offers to reconvey property under Subsection (2)(a) has 90 days to accept or reject the municipality's offer.

(c) If a person to whom a municipality offers to reconvey property declines the offer, the municipality may offer the property for sale.

(d) Subsection (2)(a) does not apply to the disposal of property acquired by exaction by a community development ~~[or urban]~~ and renewal agency.

(3) (a) As used in this Subsection (3):

(i) "Current service area" means the area in which a public water system's distribution facilities deliver water.

(ii) "Projected municipal boundary" means the current and projected boundary of the municipality within the next 40 years.

(iii) "Projected service area" means the area into which a public water system's distribution facilities will expand as provided in the public water system's capital facilities plan.

(iv) "Public water system" is as defined in Section 19-4-102.

(v) "Sufficient water" is the amount of water that people within the projected municipal boundary will use in the next 40 years as calculated by the water supply study required by Subsection (3)(c).

(b) In addition to Subsection (1), a municipality may not condition the approval of a land use application on an applicant transferring a water right unless:

(i) the municipality demonstrates that the public water system that delivers water to the current service area or projected service area in which the proposed development in the land use application is located does not have sufficient water to deliver to the proposed development; and

(ii) the quantity of water the municipality requires the applicant to transfer does not exceed the duty values established by the Division of Water Rights.

(c) Before a municipality may require an applicant to transfer a water right, a municipality shall conduct or obtain a water supply study that:

(i) calculates whether there is sufficient water, based on the following information:

(A) the projected population growth within the projected municipal boundary;

(B) the current water use within the municipality;

(C) the water supply available to the public water systems that deliver water within the projected municipal boundary; and

(D) the projected water use within the projected municipal boundary;

(ii) analyzes and discloses the assumptions and calculations used in the water supply study; and

(iii) is conducted in a manner consistent with generally accepted engineering standards.

Section 3. Section **17-27a-507** is amended to read:

17-27a-507. Exactions.

(1) A county may impose an exaction or exactions on development proposed in a land

use application provided that:

(a) an essential link exists between a legitimate governmental interest and each exaction; and

(b) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.

(2) (a) If a county plans to dispose of surplus real property under Section 17-50-312 that was acquired under this section and has been owned by the county for less than five years, the county shall first offer to reconvey the property, without receiving additional consideration, to the person who granted the property to the county.

(b) A person to whom a county offers to reconvey property under Subsection (2)(a) has 90 days to accept or reject the county's offer.

(c) If a person to whom a county offers to reconvey property declines the offer, the county may offer the property for sale.

(d) Subsection (2)(a) does not apply to the disposal of property acquired by exaction by a community development ~~[or urban]~~ and renewal agency.

(3) (a) As used in this Subsection (3):

(i) "Current service area" means the area in which a public water system's distribution facilities deliver water.

(ii) "Projected service area" means the area into which a public water system's distribution facilities will expand as provided in the public water system's capital facilities plan.

(iii) "Public water system" is as defined in Section 19-4-102.

(iv) "Sufficient water" is the amount of water that people within the county will use in the next 40 years as calculated by the water supply study required by Subsection (3)(c).

(b) In addition to Subsection (1), a county may not condition the approval of a land use application on an applicant transferring a water right unless:

(i) the county demonstrates that the public water system that delivers water to the current service area or projected service area in which the proposed development in the land use application is located does not have sufficient water to deliver to the proposed development; and

(ii) the quantity of water the county requires the applicant to transfer does not exceed

the duty values established by the Division of Water Rights.

(c) Before a county may require an applicant to transfer a water right, a county shall conduct or obtain a water supply study that:

(i) calculates whether there is sufficient water, based on the following information:

(A) the projected population growth within the county;

(B) the current water use within the county;

(C) the water supply available to the public water systems that deliver water within the county; and

(D) the projected water use within the county;

(ii) analyzes and discloses the assumptions and calculations used in the water supply study; and

(iii) is conducted in a manner consistent with generally accepted engineering standards.

Section 4. Section **73-2-27** is amended to read:

73-2-27. Criminal penalties.

(1) This section applies to offenses committed under:

(a) Section 73-1-14;

(b) Section 73-1-15;

(c) Section 73-2-20;

(d) Subsection 73-3-3[~~(9)~~] (10);

(e) Section 73-3-26;

(f) Section 73-3-29;

(g) Section 73-5-9;

(h) Section 76-10-201;

(i) Section 76-10-202; and

(j) Section 76-10-203.

(2) Under circumstances not amounting to an offense with a greater penalty under Subsection 76-6-106(2)(b)(ii) or Section 76-6-404, violation of a provision listed in Subsection (1) is punishable:

(a) as a felony of the third degree if:

(i) the value of the water diverted or property damaged or taken is \$2,500 or greater;

and

(ii) the person violating the provision has previously been convicted of violating the same provision;

(b) as a class A misdemeanor if:

(i) the value of the water diverted or property damaged or taken is \$2,500 or greater; or

(ii) the person violating the provision has previously been convicted of violating the same provision; or

(c) as a class B misdemeanor if Subsection (2)(a) or (b) does not apply.

Section 5. Section **73-3-3** is amended to read:

73-3-3. Permanent or temporary changes in point of diversion, place of use, or purpose of use.

(1) For purposes of this section:

(a) "Permanent changes" means changes for an indefinite length of time with an intent to relinquish the original point of diversion, place of use, or purpose of use.

(b) "Temporary changes" means changes for fixed periods not exceeding one year.

(2) (a) Any person entitled to the use of water may make permanent or temporary changes in the:

(i) point of diversion;

(ii) place of use; or

(iii) purpose of use for which the water was originally appropriated.

(b) A change may not be made if it impairs any vested right without just compensation.

(3) Both permanent and temporary changes of point of diversion, place of use, or purpose of use of water, including water involved in general adjudication or other suits, shall be made in the manner provided in this section.

(4) (a) A change may not be made unless the change application is approved by the state engineer.

(b) Applications shall be made upon forms furnished by the state engineer and shall set forth:

(i) the name of the applicant;

(ii) a description of the water right;

(iii) the quantity of water;

(iv) the stream or source;

- (v) the point on the stream or source where the water is diverted;
- (vi) the point to which it is proposed to change the diversion of the water;
- (vii) the place, purpose, and extent of the present use;
- (viii) the place, purpose, and extent of the proposed use; and
- (ix) any other information that the state engineer requires.

(5) (a) The state engineer shall follow the same procedures, and the rights and duties of the applicants with respect to applications for permanent changes of point of diversion, place of use, or purpose of use shall be the same, as provided in this title for applications to appropriate water.

(b) The state engineer may not deny a change application or reduce the quantity of the water right in approving the change application based on nonuse of the water right.

~~[(b)]~~ (6) The state engineer may, in connection with applications for permanent change involving only a change in point of diversion of 660 feet or less, waive the necessity for publishing a notice of application.

~~[(6)]~~ (7) (a) The state engineer shall investigate all temporary change applications.

(b) If the state engineer finds that the temporary change will not impair any vested rights of others, he shall issue an order authorizing the change.

(c) If the state engineer finds that the change sought might impair vested rights, before authorizing the change, he shall give notice of the application to any person whose rights may be affected by the change.

(d) Before making an investigation or giving notice, the state engineer may require the applicant to deposit a sum of money sufficient to pay the expenses of the investigation and publication of notice.

~~[(7)]~~ (8) (a) The state engineer may not reject applications for either permanent or temporary changes for the sole reason that the change would impair the vested rights of others.

(b) If otherwise proper, permanent or temporary changes may be approved for part of the water involved or upon the condition that conflicting rights are acquired.

~~[(8)]~~ (9) (a) Any person holding an approved application for the appropriation of water may either permanently or temporarily change the point of diversion, place of use, or purpose of use.

(b) A change of an approved application does not:

(i) affect the priority of the original application; or
(ii) extend the time period within which the construction of work is to begin or be completed.

~~[(9)]~~ (10) Any person who changes or who attempts to change a point of diversion, place of use, or purpose of use, either permanently or temporarily, without first applying to the state engineer in the manner provided in this section:

(a) obtains no right;

(b) is guilty of a crime punishable under Section 73-2-27 if the change or attempted change is made knowingly or intentionally; and

(c) is guilty of a separately punishable offense for each day of the unlawful change.

~~[(10)]~~ (11) (a) This section does not apply to the replacement of an existing well by a new well drilled within a radius of 150 feet from the point of diversion of the existing well.

(b) Any replacement well must be drilled in accordance with the requirements of Section 73-3-28.

~~[(11)]~~ (12) (a) In accordance with the requirements of this section, the Division of Wildlife Resources or Division of Parks and Recreation may file applications for permanent or temporary changes for the purpose of providing water for instream flows, within a designated section of a natural stream channel or altered natural stream channel, necessary within the state for:

(i) the propagation of fish;

(ii) public recreation; or

(iii) the reasonable preservation or enhancement of the natural stream environment.

(b) Applications may be filed for changes on:

(i) perfected water rights presently owned by the respective division;

(ii) perfected water rights purchased by the respective division for the purpose of providing water for instream flows, through funding provided for that purpose by legislative appropriation or acquired by lease, agreement, gift, exchange, or contribution; or

(iii) appurtenant water rights acquired with the acquisition of real property by either division.

(c) A physical structure or physical diversion from the stream is not required to implement a change for instream flow use.

(d) This Subsection [~~(11)~~] (12) does not allow enlargement of the water right sought to be changed nor may the change impair any vested water right.

(e) In addition to the other requirements of this section, an application filed by either division shall:

(i) set forth the legal description of the points on the stream between which the necessary instream flows will be provided by the change; and

(ii) include appropriate studies, reports, or other information required by the state engineer that demonstrate the necessity for the instream flows in the specified section of the stream and the projected benefits to the public that will result from the change.

(f) The Division of Wildlife Resources and Division of Parks and Recreation may:

(i) purchase water rights for the purposes provided in Subsection [~~(11)~~] (12)(a) only with funds specifically appropriated by the Legislature for water rights purchases; or

(ii) accept a donated water right without legislative approval.

(g) This Subsection [~~(11)~~] (12) does not authorize either division to:

(i) appropriate unappropriated water under Section 73-3-2 for the purpose of providing instream flows; or

(ii) acquire water rights by eminent domain for instream flows or for any other purpose.

(h) This Subsection [~~(11)~~] (12) applies only to change applications filed on or after April 28, 1986.

~~[(12)]~~ (13) (a) Sixty days before the date on which proof of change for instream flows under Subsection [~~(11)~~] (12) is due, the state engineer shall notify the applicant by registered mail or by any form of electronic communication through which receipt is verifiable of the date when proof of change is due.

(b) Before the date when proof of change is due, the applicant must either:

(i) file a verified statement with the state engineer that the instream flow uses have been perfected, which shall set forth:

(A) the legal description of the points on the natural stream channel or altered natural stream channel between which the necessary instream flows have been provided;

(B) detailed measurements of the flow of water in second feet changed;

(C) the period of use; and

307 (D) any additional information required by the state engineer; or
308 (ii) apply for a further extension of time as provided for in Section 73-3-12.
309 (c) Upon approval of the verified statement required under Subsection [~~(12)~~] (13)(b)(i),
310 the state engineer shall issue a certificate of change for instream flow use.

Legislative Review Note
as of 2-19-08 12:10 PM

Office of Legislative Research and General Counsel

S.B. 279 - Water and Land Use Development

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
